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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,252	08/19/2003	John Stelmach	5-0221-001	4646
803	7590	06/16/2004	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			ESTREMSKY, GARY WAYNE	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/643,252

Applicant(s)

STELMACH, JOHN

Examiner

Gary Estremsky

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 10, 13, 14, 17-19 and 22 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 11, 12, 15, 16, 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/19/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 17 is objected to because of the following informalities: "sedge" should be replaced with -wedge-. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Double inclusion of "a bumper member" renders the scope of the claim indefinite since it is not clear if the same or a second bumper member is claimed as the invention.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,280,977 to Piva.

Piva '977 teaches Applicant's claim limitations including : a "door stop unit including a generally wedge shaped stop member" - 54, a "holder unit including a hollow holster" - the space defined by parts including 66.

As regards claim 2, Piva '977 teaches a "tether" - 64.

6. Claims 1, 3, 5-7, 9, 13,17-19, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 1,605,422 to Benedict.

Benedict '422 teaches Applicant's claim limitations including : a "door stop unit including a generally wedge shaped stop member" - 11, a "holder unit including a hollow holster" - including 12,19,20. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). See MPEP 2114 as regards claim interpretation.

As regards claim 5, Benedict '422 teaches "means for attaching" including 15,16.

As regards claim 10, Benedict '422 discloses "bumper member" 12a.

As regards claim 22, "opening" at 14 "is subsatantially smaller than the external periphery of the largest end of the wedge shaped stop member".

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7. Claims 1, 5, 9, 10, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,907,832 to Pemberton.

Pemberton '832 teaches Applicant's claim limitations including : a "door stop unit including a generally wedge shaped stop member" - 10 where the vertical side (as shown in Fig 1) forms an "enlarged end" and the portion generally indicated at 32 forms a "tapered end", a "holder unit including a hollow holster" - including 18.

As regards claim 5, Pemberton '832 teaches "means for attaching" - including 22,22,22 and associated screws.

As regards claim 10, Pemberton '832 teaches spring 40 which reads on limitation of "bumper member" since particular structure of that element that might be relied upon to patentably distinguish from the well known structure of the prior art is not defined in the claim.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,280,977 to Piva.

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While Piva '977 does not disclose making the wedge shaped member from a "hard rubber", it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to do so since it is well known in the art of wedge members that hard rubber offers both traction and toughness required and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

#### ***Allowable Subject Matter***

10. Claim 6, 8, 11, 12, 15, 16, 20, and 21 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 370,699 to Hardin.

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U.S. Pat. No. 866,565 to Bellamy.

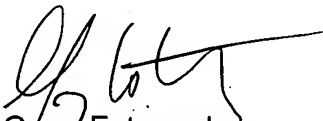
U.S. Pat. No. 1,542,888 to Iverson.

U.S. Pat. No. 2,376,117 to Bright.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gary Estremsky  
Primary Examiner  
Art Unit 3676